

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE  
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

**FILED BY CLERK**

**JUNE 26 2009**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Appellee,	)	2 CA-CR 2008-0314
	)	DEPARTMENT A
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
DONALD ALLEN GUADAGNI,	)	Rule 111, Rules of
	)	the Supreme Court
Appellant.	)	
	)	

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APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054436

Honorable Hector E. Campoy, Judge

AFFIRMED

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Robert J. Hirsh, Pima County Public Defender  
By Frank P. Leto

Tucson  
Attorneys for Appellant

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H O W A R D, Presiding Judge.

¶1 Donald Allen Guadagni was indicted for a single count of bigamy in cause number CR-20042416. That matter was dismissed without prejudice on Guadagni's motion, but he was again indicted for the same crime in cause number CR-20054436. He was

convicted following a jury trial, and he appealed. This court affirmed his conviction but vacated the trial court's order that he pay restitution to the two women he had married, Sarah and Gail, because we found the court had violated Guadagni's rights to due process and assistance of counsel by entering the order after an ex parte proceeding.<sup>1</sup> *State v. Guadagni*, 218 Ariz. 1, ¶¶ 22-23, 178 P.3d 473, 479-80 (App. 2008). We remanded the matter to the trial court for further proceedings. *Id.* ¶ 1. Following an evidentiary hearing, the trial court ordered Guadagni to pay restitution of \$1,472.77 to Sarah for legal fees she had incurred in obtaining a decree of annulment in her home country of Canada and \$992.00 to Gail for lost wages.<sup>2</sup> Guadagni now appeals from that order.

¶2 Counsel filed a brief citing *Anders v. California*, 386 U.S. 738 (1967), avowing he had “found no arguable legal issue” and asking this court to “review the record for error.” Guadagni then filed a supplemental brief pro se, raising several issues he claims render the restitution order improper. He contends that, under A.R.S. § 25-125(B), his marriage to Sarah was never valid and thus the annulment proceeding “was superfluous and un[]necessary.” He also asserts Sarah did not prove she had paid for the annulment herself, deeming it “more likely [that she had] borrowed the funds from her parents,” and complains Sarah “did not agree to file a notice of satisfaction with the Canadian court upon completion

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<sup>1</sup>We rejected Guadagni's claim that restitution was improper because bigamy is a victimless crime. *Guadagni*, 218 Ariz. 1, ¶¶ 17-18, 178 P.3d at 478.

<sup>2</sup>The court later amended its minute entry order to show that Guadagni had already paid \$427.39 in restitution to Gail and \$512.61 to Sarah.

of restitution payments.”<sup>3</sup> As to the restitution Guadagni was ordered to pay to Gail, he claims the court improperly included compensation for wages Gail had lost by attending court proceedings related to the first indictment. He also asserts that she was compensated for more hours of work than she had actually lost; that she had taken “‘vacation time’ [from] work” for some of the hearing dates, thus “effectively doubling her income”; that she had not adequately proven her hourly wage; and that she had not “provide[d] any tax return information indicating that the restitution was being reported as income.”

¶3 A trial court must “require [a] convicted person to make restitution to the person who is the victim of the [defendant’s] crime . . . in the full amount of the economic loss as determined by the court.” A.R.S. § 13-603(C). “‘A court has wide discretion in setting restitution based on the facts of each case.’” *State v. Dixon*, 216 Ariz. 18, ¶ 11, 162 P.3d 657, 660 (App. 2007), *quoting State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312 (App. 1992). “We will uphold a restitution award if it bears a reasonable relationship to the loss sustained.” *Id.* And we view the evidence presented at the restitution hearing in the light most favorable to sustaining the restitution order. *See State v. Wilson*, 185 Ariz. 254, 260, 914 P.2d 1346, 1352 (App. 1995) (in reviewing restitution order, appellate court may not “substitute [its] own assessment of the evidence for that of the trial court”). Questions

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<sup>3</sup>Guadagni attached to his supplemental opening brief a letter that suggests he had been ordered by the Canadian court to pay \$1,500 in costs for the annulment proceeding but had not done so.

of statutory interpretation, however, we review de novo. *State v. Getz*, 189 Ariz. 561, 563, 944 P.2d 503, 505 (1997).

¶4 As we stated in our opinion on Guadagni’s first appeal, the cost of Sarah’s obtaining an annulment and the amount of wages Gail lost by voluntarily attending court proceedings, if properly documented, are recoverable as restitution because those costs “flow[] sufficiently from [Guadagni]’s criminal conduct under the test set forth in [*State v. Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d [1131,] 1133 [(2002)].” *Guadagni*, 218 Ariz. 1, ¶ 19, 178 P.3d at 479-80; *see also* A.R.S. § 13-105(16) (“economic loss” includes earnings lost “as a result of the commission of an offense”); *State v. Lindsley*, 191 Ariz. 195, 198-99, 953 P.2d 1248, 1251-52 (App. 1997). The court in *Wilkinson* held that Arizona’s restitution statutes “direct a court to award restitution for those damages that flow directly from the defendant’s criminal conduct, without the intervention of additional causative factors.” 202 Ariz. 27, ¶ 7, 39 P.3d at 1133.

¶5 Guadagni’s contention that the annulment of his marriage to Sarah was unnecessary is premised on the very contention we rejected in affirming his conviction. *Guadagni*, 218 Ariz. 1, ¶¶ 7-12, 178 P.3d at 475-77. Moreover, at the restitution hearing, he stipulated through counsel that the annulment had cost 2000 Canadian dollars. Guadagni does not contend that the court erred in calculating the equivalent amount in American currency. Whether Sarah paid for the annulment with money she had or money she borrowed is immaterial to the court’s conclusion that she had suffered an economic loss. If she

borrowed the money, she incurred a debt for that amount. Nor is it material that she did not agree to file a notice of satisfaction with the Canadian court upon payment of the restitution. We find no error in the trial court's order that Guadagni pay restitution to Sarah in the amount ordered.

¶6 Nor do we find any error in the court's including restitution for wages Gail had lost by attending court proceedings on the first indictment in the amount it ordered Guadagni to pay to her. As noted above, that indictment was dismissed without prejudice upon Guadagni's motion, but he was convicted of the same crime pursuant to the second indictment. Restitution is awarded for losses flowing from the defendant's conduct and the *offense* for which a defendant has been convicted. § 13-603(C); *Wilkinson*, 202 Ariz. 27, ¶ 7, 39 P.3d at 1133. Court proceedings related to the first indictment were occasioned as much by Guadagni's bigamy as were the proceedings under the second indictment that resulted in his conviction. Gail's testimony and the exhibits she presented showing her wages and the hours she had missed from work sufficiently established the amount of the monetary loss she had suffered and thus supported the court's order. That she received vacation pay for some of the days she attended court hearings does not negate her loss. By using her vacation time to attend the court hearings, she lost the opportunity to take a paid vacation based on that time in the future. Guadagni's restitution will compensate her for that loss; it will not "doubl[e] her income." Whether Gail must or will report as income to the Internal Revenue Service any restitution she receives has no bearing on whether the court correctly ordered

Guadagni to pay the restitution. Finally, the fact that Gail apparently signed an “affidavit of no restitution claim” prior to the court’s dismissal of the first indictment did not preclude her from seeking restitution following the second indictment. Her testimony at the evidentiary hearing clearly showed she had not waived her right to restitution.

¶7 Pursuant to our obligation under *Anders*, we have reviewed the record in its entirety and have found no error warranting reversal. Therefore, we affirm the trial court’s restitution order.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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PHILIP G. ESPINOSA, Judge